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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,945	05/03/2006	Shimshon Sagiv	2111-43	5280
23117 7590 11/09/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER SANDERSON, JOSEPH W	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 11/09/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,945	Applicant(s) SAGIV, SHIMSHON	
	Examiner Joseph W. Sanderson	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 13-15, 17-29 and 34-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-12, 16 and 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Drawings

1. The drawings were received on 23 July 2009. These drawings are acceptable.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 8 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Happel (US 4 200 058) in view of Aslakson (US 1 048 481).

Regarding independent claims 1 and 30:

Happel discloses an apparatus for gripping the teat of an animal and assisting in drawing milk from the animal via a compressible milk collector, said apparatus including:

a housing (2);

a plurality of constricting elements (19-21) arranged in said housing in touching relation to the milk collector (3), said constricting elements being selectably operable in constricting and non-constricting modes;

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means for selectably switching said constricting elements back and forth between non-constricting and constricting modes (pressurized air supply means and valves, 11 and those not shown; col 4, lines 24-30); and

a controller (7) in communication with said means for selectably switching, said controller operative (i.e. capable) to effect a predetermined timing and sequence for periodically switching said constricting elements between their constricting and non-constricting modes, thereby to compress the teat of the animal drawing milk therefrom.

Happel does not disclose the constricting elements as independently constrictable of each other.

Aslakson teaches a milking device which uses independently constrictable elements (F, each with its own pressure supply).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Happel to use independently constrictable elements as taught by Aslakson as this is a well-known alternative means for predictably constricting a teat, and since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claims 2 and 31:

The discussion above regarding claims 1 and 30 is relied upon.

Happel as modified renders the constricting elements as pneumatically inflatable sack-like elements (as generally seen in Fig 3).

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Regarding claims 3, 32 and 33:

The discussion above regarding claims 2 and 31 is relied upon.

Happel as modified renders the means for selectively switching as pneumatic means (air providing means and valves).

Regarding claim 8:

The discussion above regarding claim 1 is relied upon.

Happel as modified renders the housing as cylindrically-shaped (as seen in Figs 1-3).

4. Claims 1-4, 8-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Happel ('058) in view of Aslakson ('481) and Brazil et al. (US 6 537 033).

Regarding independent claims 1 and 9:

Happel, in an alternative interpretation, discloses a system for milking an animal, said system including:

at least one apparatus for gripping the teat of an animal and assisting in drawing milk from the animal via a compressible milk collector, said apparatus including:

a housing (2);

a plurality of constricting elements (19-21) arranged in said housing in touching relation to the milk collector, said constricting elements being selectably operable in constricting and non-constricting modes;

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means for selectably switching said constricting elements, back and forth between the non-constricting and constricting modes (pressurized air supply means and valves, 11 and those not shown; col 4, lines 24-30); and

a milking claw (7) in flow communication with the milk collector and which collects milk accumulated within the milk collector, said claw having a vent to maintain atmospheric pressure on the teat.

Happel does not disclose a controller in communication with said means for selectably switching, said controller operative to effect a predetermined timing and sequence for periodically switching said constricting elements between the constricting and non-constricting modes;

a suction generating means that draws milk from said claw; and

a collection vessel in flow communication with said suction generating means in which milk drawn from said milking claw is collected.

Brazil teaches a milking device having a controller to operate the device (as seen in Figs 3-5), a suction generating means (24) and a collection vessel (44).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Happel to use a controller, suction device and collection vessel as taught by Brazil for the well-known predictable advantages of automatically operating the device, and transporting the milk from the animal for storage.

Happel further does not disclose the constricting elements as independently constrictable of each other.

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Aslakson teaches a milking device which uses independently constrictable elements (F, each with its own pressure supply).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Happel to use independently constrictable elements as taught by Aslakson as this is a well-known alternative means for predictably constricting a teat, and since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claims 2 and 10:

The discussion above regarding claims 1 and 9 is relied upon.

Happel as modified renders the constricting elements as pneumatically inflatable sack-like elements (as generally seen in Fig 3).

Regarding claims 3 and 11:

The discussion above regarding claims 2 and 10 is relied upon.

Happel as modified renders the means for selectively switching as pneumatic means (air providing means and valves).

Regarding claims 4 and 12:

The discussion above regarding claims 3 and 11 is relied upon.

Happel as modified renders the pneumatic means as an air compressor (the pulsator provides compressed air) and valves responsive to the controller (as taught by Brazil).

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Regarding claims 8 and 16:

The discussion above regarding claims 1 and 9 is relied upon.

Happel as modified renders the housing as cylindrically-shaped (as seen in Figs 1-3).

Response to Arguments

5. Applicant's arguments filed 23 July 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the constricting elements of Happel are not selectively operable because they are not independently operable (page 16), the requirement is that they may be selectively operable between constricting and non-constricting modes, which Happel meets as it constricts and releases during operation. However, it is noted that the amendment introduces the "independently operable" requirement later in the claim (argued at page 7), which is covered by the new rejection.

In response to applicant's argument that Happel only produces a negligible amount of milk and therefore does not meet the claim (page 16), there is no requirement within the claims specifying the amount of milk to be obtained.

In response to applicant's arguments against the Happel individually (page 17), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The vent required is taught by Brazil, rendering the vent obvious. Further, it should be noted that the vent is required *in the milking claw*, not the teat cup.

In response to applicant's argument that the examiner admits that Happel does not disclose a controller via the rejection with the Brazil reference (page 19), the two rejections illustrate different interpretations of the Happel reference. This is clarified in the rejection above.

In response to applicant's argument that Brazil teaches away from the controller required because it does not operate constricting means (page 19), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Brazil teaches an electrical controller for a milking device, which may be applied to the device of Happel for operation in the desired manner.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-0474. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W. S./
Examiner, Art Unit 3644

/T. Nguyen/ for Mike Mansen
11/13/09